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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/523,606	02/04/2005	Yoshinobu Imaizumi	1422-0661PUS1	1672

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EXAMINER	
DOUYON, LORNA M	

ART UNIT	PAPER NUMBER
1751	

NOTIFICATION DATE	DELIVERY MODE
08/03/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/523,606	IMAIZUMI ET AL.	
	Examiner	Art Unit	
	Lorna M. Douyon	1751	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 June 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-5* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-5* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

1. This action is responsive to the amendment filed on June 1, 2007.

2. Claims 1-5 are pending.

3. The rejection of claims 1-5 under 35 U.S.C. 102(b) as being anticipated by Kubota et al. (EP 0,969,082) is withdrawn in view of Applicants' amendment.

4. The rejection of claim 2 under 35 U.S.C. 102(b) as being anticipated by Kanai et al. (US Patent No. 5,821,207) is withdrawn in view of Applicants' amendment.

5. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 102

6. Claim 2 is rejected under 35 U.S.C. 102(b) as being anticipated by France et al. (US Patent No. 6,063,751), hereinafter "France".

France, in Comparative Example IV, teaches a detergent composition comprising 40 wt% sodium C_{12-16} alkyl sulfate surfactant, 30 wt% sodium carbonate, 30 wt% sodium tripolyphosphate (STPP, which is also water soluble), having a mean particle size of 300 microns (see col. 11, lines 21-61). Even though this comparative example is outside the invention of France, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention.

W.L. Gore & Associates, Inc. v. *Garlock, Inc.,* 721 F.2d 1540,220 USPQ 303 (Fed. Cir. *1* 983), *cert. Denied,* 469 *U.S.* 851 (1984). In addition, a known or obvious composition does not become patentable simply because it has been described as somewhat inferior to some other product for the same use, see In *re Gurley,* 27 F.3d 551,554,31 USPQ2d 1130, 1132 (Fed. Cir. 1994). See MPEP 2141.02, MPEP 2145X.D.I and MPEP 2123. Hence, France anticipates the claims.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

8. Claims 1 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over France.

France teaches the features as described above. France, however, fails to disclose the process for making the detergent particles.

It should be noted that present claim 1 is a product-by-process claim, hence, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably

distinct, not the examiner to show the same process of making, see *In re* Brown, 173 *USPQ 685* and *In re* Fessmann, 180 USPQ 324. Burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 *USPQ* 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman,* 180 USPQ 324 (CCPA 1974); *In re Brown,* 173 *USPQ 685* (CCPA 1972).

9. Claims 1-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubota et al. (EP 0,969,082), hereinafter "Kubota".

Kubota teaches a method for preparing detergent particles comprising the steps of (a) preparing a slurry containing a water-insoluble inorganic compound, a water-soluble polymer, and a water-soluble salt, wherein 60% by weight or more of water-soluble components including the water-soluble polymer and the water-soluble salt is dissolved in the slurry; (b) spray-drying the slurry obtained in step (a) to prepare base particles; and (c) adding a surfactant to the base particles obtained in step (b) to support the surfactant (see page 3, lines 26-32; page 12, line 53 to page 13, line 4). In order to further improve the properties and quality of the resulting detergent particles, it is preferable to further add a surface-modifying step subsequent to step (c) (see page 13, lines 6-8). Kubota also teaches a detergent composition comprising the detergent particles in an amount of 50% by weight or more (see page 3, lines 34-35), and a detergent composition having an average particle size of from 150 to 500 μm (see page 3, lines 36-43). As the water-insoluble inorganic compound, examples include crystalline or amorphous aluminosilicates, silicon dioxide, hydrated silicate compounds,

clays and the like (see page 5, lines 53-57), in amounts from 20 to 90% by weight; and the water-soluble salts, which are inorganic salts like alkali metal carbonates are present in amounts from (see page 6, lines 37-43; page 7, lines 12-14). Kubota teaches Base Particles 1 comprising 50 wt% zeolite (component a), 20 wt% sodium carbonate, 10 wt% sodium sulfate and 1.5 wt% sodium sulfite (a total of 31.5 wt% water-soluble alkali inorganic substance), having an average particle size of 225 μm (see Table 1 on page 19), which Base Particles 1 were prepared by spray drying (see page 18, lines 1-21). To 100 parts by weight of Base Particles 1 was added 3 parts by weight of palmitic acid (an acid precursor of anionic surfactant), and the resulting mixture was surface coated with 8 parts by weight of crystalline aluminosilicate and the resulting detergent composition has an average particle size of 270 μm (see Table 2, Example 5 on page 21 and page 23, line 56 to page 24, line 10). Kubota, however, fails to specifically disclose detergent particles, or the process of making thereof, wherein the detergent particles comprise zeolite in an amount of 10% by weight or less.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to prepare detergent particles comprising a water-insoluble inorganic compound (i.e. component a) other than zeolite, such as silicon dioxide, hydrated silicate compounds, and clays because these are other suitable water-insoluble inorganic compounds taught by Kubota on page 5, lines 53-57. Non-preferred embodiments can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278(CCPA 1976); *In re Kohler*, 177 USPQ 399.

10. Claims 1-2 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Riddick et al. (US Patent No. 5,573,697), hereinafter "Riddick".

Riddick teaches detergent granules comprising 30.0 wt% LAS (linear alkylbenzene sulfonate), 21.6 wt% STPP and 45. 5 wt% sodium carbonate (see Example 9 in col. 7, lines 6-16). The detergent granules preferably have an average particle size of from about 200 microns to about 600 microns, more preferably from about 300 microns to about 500 microns, more preferably still from about 350 microns to about 450 microns (see col. 3, lines 61-65). Riddick, however, fails to disclose detergent particles which are obtained by the process recited in claim 1, and the particle size of the detergent particles in values within those recited.

It should be noted that present claim 1 is a product-by-process claim, hence, any difference imparted by the product by process limitations would have been obvious to one having ordinary skill in the art at the time the invention was made because where the examiner has found a substantially similar product as in the applied prior art, the burden of proof is shifted to the applicant to establish that their product is patentably distinct, not the examiner to show the same process of making, see *In re* Brown, 173 *USPQ 685* and *In re* Fessmann, 180 USPQ 324. Burden is on applicants to show product differences in product by process claims, see *In re Thorpe*, 227 *USPQ* 964 (Fed. Cir. 1985); *In re Best*, 195 USPQ 430 (CCPA 1977); *In re Fessman,* 180 USPQ 324 (CCPA 1974); *In re Brown,* 173 *USPQ 685* (CCPA 1972).

With respect to the particle size of the detergent particles, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select

the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See In re *Boesch,* 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also In re *Woodruff* 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and In re *Aller,* 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

Response to Arguments

11. Applicants' arguments filed June 1, 2007 have been fully considered but they are not persuasive.

With respect to the obviousness rejection based upon EP '082 to Kubota, Applicants argue that the detergent composition of the present invention differs from the detergent composition of EP '082 in that the base particles may contain a zeolite in an amount of 10 wt% or less, while the base particles used in the detergent composition of EP '082 contain 50 wt% of a zeolite. Applicants also stated that Example 4 of EP '082 is considered as the closest prior art Example.

While it is true that Example 4 is the closest prior art Example, a reference is not limited to the working examples, *see In re Fracalossi, 215 USPQ 569* (CCPA 1982). As stated above, on page 5, lines 53-57, EP '082 teaches water-insoluble inorganic

compound (i.e. component a) other than zeolite, such as silicon dioxide, hydrated silicate compounds, and clays. Hence, zeolite need not be used as the water-insoluble inorganic compound. Even though zeolite may be preferred, non-preferred embodiments (i.e., silicon dioxide, hydrated silicate compounds, and clays) can be indicative of obviousness, see *Merck & Co. v. Biocraft Laboratories Inc.* 10 USPQ 2d 1843 (Fed. Cir. 1989); *In re Lamberti*, 192 USPQ 278(CCPA 1976); *In re Kohler*, 177 USPQ 399.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are considered cumulative to or less material than those discussed above.

13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on 571-272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M. Douyon/
Primary Examiner
Art Unit 1751